IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

OP.No. 1810 of 2001(M)

PETITIONER:

C.C.GEEVER, C.G.BUTTON HOUSE,
BIG BAZAR, PALAKKAD.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:
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1. ADDL. SALES TAX OFFICER, 1ST CIRCLE, PALAKKAD.

2. DEPUTY COMMISSIONER, COMMERCIAL TAXES, PALAKKAD.

3. COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. TAHSILDAR (RR), PALAKKAD.

BY SHRI.K.P.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO. 1810/2001

ORDER ON CMP NO.3069/2001 IN O.P.NO. 1810/2001

DISMISSED.

05/12/2007 SD/-(C.N.RAMACHADNRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PENALTY ORDER PASSED BY 1ST RESPONDENT DATED 14/02/2000.

P2 : COPY OF THE ORDER PASSED BY 2ND RESPONDENT DATED 14/09/2000.

P3 : COPY OF THE REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 26/09/2000.

P4 : COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 11/12/2000.

P5 : COPY OF THE DEMAND NOTICE ISSUED BY THE 4TH RESPONDENT UNDER SECTION 7 OF THE RR ACT, DATED 17/06/2000.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 1810 of 2001

Dated, this the 5th day of December, 2007

J U D G M E N T

Heard learned counsel for petitioner and learned Government Pleader.

2. Petitioner is challenging Ext.P1 order of penalty levied under Section 45A of the KGST Act, which is confirmed in two levels of revisions by the revisional authorities vide Exts.P2 & P4 orders. Learned counsel for the petitioner contended that return filed is accepted and penalty is levied only for non-payment of tax. According to him, since there is no evasion of tax, penalty cannot be levied at double the amount of tax. Learned Government Pleader on the other hand relied on a decision of this Court in **Zakir Hussain** Vs. **Addl. Sales Tax Officer,** reported in 1 KTR 211, whereunder this Court held that non-payment of tax is also evasion. It is seen that Ext.P1 is an ex parte order and even at the time of first and second revision, petitioner had not remitted the tax, which appears to be the reason for confirming the penalty as such. However, learned counsel now submitted that party has paid full tax in 2001. In the circumstances, I disposed of this original petition directing the petitioner to produce proof of payments made towards

tax and interest, before the 1st respondent. First respondent, on receipt of copy of this judgment along with proof of payments made, will see whether payment is first adjusted towards interest under Section 55C, and if not, he will make adjustment and re-compute liability with interest under Section 23(3) till date of payment. If any balance is due, petitioner will pay the same along with interest under Section 23(3) till date of payment. If petitioner makes payment of full tax and interest as above, at least by 20/01/2008, then there will be direction to the 1st respondent to limit the penalty to Rs.25,000/-.

3. However, if petitioner does not make payment of tax and interest as above, at least by 20/01/2008, then original petition will stand dismissed treating the penalty as confirmed.

4. It is further clarified that reduction of penalty is on a further condition that penalty of Rs.25,000/- along with tax and interest also should be paid on or before 15/02/2008, failing which, original penalty will stand restored.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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